



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

December 4, 2008

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IRM 5.5.5.7

MEMORANDUM FOR DIRECTOR, ADVISORY, INSOLVENCY AND QUALITY
DIRECTOR, CAMPUS COMPLIANCE SERVICES

FROM: Frederick W. Schindler /s/ *Kristen Bailey* (for)
Director, Collection Policy

John H. Imhoff, Jr. /s/ *John H. Imhoff*
Director, Specialty Programs

SUBJECT: Interim Guidance for Processing of Requests for Extension of
Time to File and/or Pay United States Estate Tax

The purpose of this memorandum is to issue interim guidance for the processing of Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate Taxes, by Advisory, Insolvency and Quality (AIQ) Advisory staff and Campus Compliance Operations. Please ensure that this information is distributed to all affected employees.

Internal Revenue Manual (IRM) 5.5.5.7 and IRM 4.25.2.1 provide criteria for transfer of extension requests to Advisory. This criterion is being revised as follows:

- All requests for extension to file and pay involving unfiled tax returns in which the estate anticipates a cash shortage to pay taxes that will become due of \$25,000.00 or more will be sent to Advisory for approval consideration;
- Extension requests on unfiled returns where the estate sends payment of the estimated liability with the request (payment and estimated tax are equal) will not be sent to Advisory; requests where the estimated tax is not paid will be sent to Advisory if the estimated liability is \$25,000.00 or more;
- All requests for extensions to pay on accounts in which the tax return has been filed and reflect a balance due over \$50,000.00 will be sent to Advisory;
- All extensions to pay where it is the third request, regardless of dollar amount will be sent to Advisory; and,
- All requests for extension of time to pay annual installments that are deferred under Internal Revenue Code (IRC) 6166 will be sent to Advisory.

Furthermore, there will be IRM changes to criteria for evaluating extension requests as follows:

- Employees will be expected to evaluate reasonable cause statements on extension requests in which the estate has requested the automatic six (6) month extension to file and a non-automatic twelve (12) month extension to pay tax due upon filing.
- If the reasonable cause statement sent by the estate provides details (see instructions to Form 4768, Application for Extension of Time to File and/or Pay U.S. Estate Taxes, attached) explaining why it is unable to determine the tax liability or the liquidity of assets, it **may be** reasonable to limit approval of the extension of time to pay to six (6) months. This corresponds with the extended due date of the estate tax return; making it reasonable to expect that the executor knows the tax liability and liquidity of assets by the end of that six (6) month period.
- If the executor then needed additional time to pay the estate tax, another request could be made on Form 4768.
- If the estate indicates no tax will be due it **may be** reasonable to deny a request for extension of time to pay when the taxpayer believes in good faith that no liability is owed. Although an estate's request for an extension of time to pay may state that no tax liability will be due with the return consideration will be given to the reasonable cause explanation in evaluating these requests for an extension to pay.

Extension to pay requests that lack a reasonable cause statement will be allowed an additional fifteen (15) calendar days to perfect the reasonable cause statement. The employee reviewing the request will send a letter to the executor requesting additional information and will document the extended time allowed in the case history. If a timely response is not provided from the estate the request will be denied. The IRM will be revised to outline examples of reasonable cause criteria that are stated in the instructions to Form 4768 and regulation section 20.6161.

Final changes will be incorporated into IRM 5.5.5, Processing Estate Tax Extensions, and IRM 4.25.2, Campus Procedures for Estate Tax by the end of October 2009.

If you have any questions, please feel free to contact me, or a member of your staff may contact Cindy Ocmand, Collection Policy Analyst or Nancy Koroly, Attorney-Advisor.

Attachment

cc: www.irs.gov

1. You were unable to request an automatic extension,
2. It is impossible or impractical to file Form 706 by the due date, and
3. You should be granted an extension at this time.

Unless the executor is out of the country, the requested extension cannot be for more than 6 months from the original due date of the Form 706.

Note. We will contact you only if your request is denied. Keep a copy of the form for your records.

If a form on extension is not required to be filed after an extension of time to file has been granted. If you have been granted an automatic extension, additional extension, or extension for cause, and it is later determined that you are not required to file the form extended (that is, Form 706, 706-A, 706-D, 706-NA, or 706-QDT), you should write a letter to the Internal Revenue Service Center listed under *Where To File* on page 2, stating that no return is required for the estate. Sending this letter should eliminate any further correspondence with the IRS. Please include with your letter a copy of the Estate's Probate Inventory and Appraisal.

Part III. Extension of Time To Pay (Section 6161)

An extension of time to pay (section 6161(a)(1)) may not exceed twelve months. A discretionary extension of time to pay for reasonable cause (section 6161(a)(2)) may be granted, for 1 year at a time, for up to a maximum of ten years. A discretionary extension of time to pay a deficiency for reasonable cause (section 6161(b)(2)) may be granted, for 1 year at a time, up to a maximum of 4 years. Different extension periods may apply to extensions of time granted for a section 6163 election (reversionary or remainder interest) or a section 6166 election (closely held business).

The application must establish why it is impossible or impractical for the executor to pay the full amount of the estate tax by the estate tax return due date. Examples of reasonable cause provided in Regulations section 20.6161-1 include the following.

- An estate includes sufficient liquid assets to pay the estate (and GST) tax when otherwise due. The liquid assets, however, are located in several jurisdictions and are not immediately subject to the control of the executor. Consequently, such assets cannot readily be collected by the executor even with reasonable effort.
- An estate is comprised, in substantial part, of assets consisting of rights to receive payments in the future (for example, annuities, copyright royalties, contingent fees, or accounts receivable). These assets provide insufficient present cash with which to pay the estate (and GST) tax when otherwise due and the estate cannot borrow against these assets except upon terms that would cause a loss to the estate.
- An estate includes a claim to substantial assets which cannot be collected without litigation. Consequently, the size of the gross estate is unascertainable at the time the tax is otherwise due.

- An estate does not have sufficient funds (without borrowing at a rate of interest higher than that generally available) with which to pay the entire estate (and GST) tax when otherwise due, to provide a reasonable allowance during the remaining period of administration of the estate for the decedent's surviving spouse and dependent children, and to satisfy claims against the estate that are due and payable. In addition, the executor has made a reasonable effort to convert assets in the executor's possession (other than an interest in a closely held business to which section 6166 applies) into cash.

In general, an extension of time to pay will be granted only for the amount of the cash shortage. You must show on Part IV the amount of the estate (and GST) tax (attach a copy of the return if it has already been filed; otherwise estimate the tax), the amount of the cash shortage, including a statement of the current assets already distributed, a plan for partial payments during the extension period, and the balance due. To avoid penalties and additional interest, you must pay any balance due with this form.

To assist us in processing the return, read the bulleted items, check the appropriate box, and enter the extension date you are requesting in the box indicated.

The part of the estate tax for which the extension is granted must be paid with interest from the estate tax due date before the expiration of the extension granted.

Note. An extension of time to pay does not extend the time to file.

Application Denied—Appeal Rights

If your application for extension of time to pay is denied, you may file a written appeal with the IRS. To file an appeal, you must:

- Send your appeal to the following address:

Internal Revenue Service Center
201 West Rivercenter Blvd.
Stop 824G
Covington, KY 41011

- Send your appeal by registered or certified mail, and
- File your appeal within 10 days after the denial is mailed to the executor.

The appeal is considered filed on the date it is postmarked if postmarked timely but received after the 10-day period. If the due date falls on a Saturday, Sunday, or legal holiday, file by the next business day.

Part IV. Payment To Accompany Extension Request

Interest must be paid on any estate (and GST) tax that is not paid in full by the original due date of the tax return, regardless of whether an extension of time to file and/or pay has been obtained. For this reason, you should pay as much of the tax as possible by the original (not extended) due date of the return.

Paying the tax. Make the check or money order payable to the "United States Treasury." Write the decedent's (or qualified heir's) social security number on the payment and the type of return (for example, "Form 706").